

MASSEY LEE MOORE, #1263341	§	
VS.	§	CIVIL ACTION NO. 4:10cv183
DIRECTOR, TDCJ-CID	§	

Petitioner filed a motion for relief from judgment (docket entry #23). A review of the history of this case reveals that, on September 7, 2010, this case was dismissed as time-barred. On March 18, 2011, the Fifth Circuit Court of Appeals denied Petitioner's motion for certificate of appealability.


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period announced in *Jimenez* is not the kind of extraordinary circumstance that warrants relief under Rule 60(b). *See, e.g., Hernandez v. Thaler*, 630 F.3d 420, 422 (5th Cir. 2011).

Furthermore, the filing of the instant motion, based on Rule 60(b), could be construed as an attempt to circumvent the federal prohibition against filing successive habeas petitions by using another means for the same purpose. Prisoners cannot evade the procedural rules governing Section 2254 petitions by the simple expedient of claiming that their petitions are brought under other motions or sections instead. Petitioner may not file a Rule 60(b) motion to bypass the successive petition prohibition. *See Fierro v. Johnson*, 197 F.3d 147, 151 (5th Cir. 1999) (Rule 60(b) motions are construed as successive habeas petitions subject to AEDPA). Construing Petitioner's motion as a successive petition, this Court notes that Petitioner may not file a successive petition in this Court without the permission of the Fifth Circuit. 28 U.S.C. § 2244(3)(A). A district court cannot rule on the merits of a successive petition that has been filed without such approval. *Crone v. Cockrell*, 324 F.3d 833, 838 (5th Cir. 2003). Petitioner has not shown that he has received permission from the Fifth Circuit to file the present petition. If he obtains permission from the Fifth Circuit, he may file a successive petition. This Court lacks jurisdiction to consider such action without permission from the Fifth Circuit. It is accordingly

ORDERED that Petitioner's motion for relief from judgment (docket entry #23) is **DENIED**. All motions not previously ruled upon are **DENIED**.

SIGNED this the 28th day of September, 2012.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE